

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 16-0251 WHA

Plaintiff,

v.

**ORDER DENYING MOTION  
TO SUPPRESS FRUITS OF  
WARRANT SEARCH**

LAMAR JOHNSON,

Defendant.

**INTRODUCTION**

In this criminal action, defendant is charged with various drug offenses. Defendant moves to suppress the fruits of a warrant search. For the reasons stated below, the motion as to the warrant search is **DENIED**.

**STATEMENT**

On March 16, a judge in San Mateo Superior Court issued a warrant to search defendant Lamar Johnson, a vehicle allegedly belonging to Johnson, and a residence in East Palo Alto also allegedly belonging to Johnson. The affidavit offered in support of the warrant alleged that within thirty days prior to seeking the warrant, two police officers met with a confidential informant, who stated that he could purchase cocaine base from a black man named "Lamar" who sold the drugs from his vehicle. The confidential informant provided a phone number for "Lamar," but the officers' records check named no registrant for that phone (Amram Decl., Exh. B at \*23).

1 The affidavit detailed two controlled purchases of cocaine base executed by the  
2 confidential informant under the supervision of the Menlo Park Police Department. The  
3 confidential informant placed calls to the cell phone number provided, and met the person who  
4 answered at a predetermined location. The officers observed the confidential informant and a  
5 second person arrive at the location, engage in casual conversation while the second person sat  
6 in his van, and exchange items through the window. The confidential informant identified the  
7 second person as “Lamar” and provided officers with cocaine base he purchased from “Lamar”  
8 (*id.* at \*24–25)

9 Detective Christopher Sample, the affiant, weighed the cocaine base and found it to be a  
10 usable amount based on his training and experience, and performed a presumptive test to  
11 confirm it was cocaine. Detective Sample and another officer surveilled the van used during the  
12 first controlled purchase. When the driver stopped to converse with a pedestrian, impeding the  
13 flow of traffic, the officers pulled him over, and requested his drivers license. The second  
14 officer identified the driver as “Lamar” from the controlled buy. His drivers license identified  
15 him as Lamar Megale Johnson (*id.* at \*26–27)

16 A records check revealed that the traffic stop had occurred in front of Johnson’s own  
17 home, which Johnson confirmed. The officers issued a warning and drove away, though  
18 Detective Sample observed Johnson enter the home (*id.* at \*27).

19 Ten days later, Detective Sample and two others oversaw a second controlled buy,  
20 which proceeded in the same manner as the first, again exchanging cash for a usable quantity of  
21 cocaine. The officers observed Johnson drive to the same address at which the traffic stop  
22 occurred, where he walked in the front door and parked his van in the driveway (*id.* at \*29).

23 The affidavit noted that the confidential informant was a paid informant, that he had  
24 never given Detective Sample false information, that he correctly described the type of drug  
25 involved, the location of the transaction, and the individuals involved, and that the money  
26 involved corresponded with the quantity bought (*id.* at \*30). (The affidavit never mentioned the  
27 quantity, and expressly requested to keep that figure confidential to avoid disclosing the identity  
28 of the confidential informant.)

1 Detective Sample also averred that his training and experience informed him that sellers  
2 of cocaine base often purchased it in bulk quantity and divided up, often in their own homes,  
3 and that they kept other contraband on their person or in their homes. Based on that affidavit,  
4 the judge in San Mateo Superior Court granted a search warrant authorizing a search of Lamar  
5 Johnson, the van he used, and the residence he entered (*id.* at \*31, \*34).

6 The search, executed on March 21, 2016, recovered, a firearm, ammunition, scales,  
7 plastic bags, pills in bottles, and cocaine base (*id.*, Exh. D). Johnson now moves to suppress the  
8 fruits of that search. In the same motion, Johnson also moved to suppress the fruits of an  
9 earlier warrantless search. All agree that the two searches are unrelated and that the facts  
10 concerning the warrant search are not in dispute. A separate order will address the warrantless  
11 search. This order follows full briefing and oral argument.

#### 12 ANALYSIS

13 Johnson moves to suppress the evidence obtained during warrant search of his home on  
14 three bases. *First*, he argues that the affidavit did not support the inference that Johnson kept  
15 cocaine base or other contraband in his home, *second*, that the affidavit lacked sufficient facts  
16 about the confidential informant's credibility, and *third*, that the affidavit omitted information  
17 about the quantity purchased during the controlled buys. Johnson's arguments go solely to the  
18 adequacy of the affidavit offered to obtain the warrant. He does not make a *Franks* challenge.  
19 This order rejects each argument.

20 When deciding whether to issue a search warrant, "[t]he task of the issuing magistrate is  
21 simply to make a practical, common-sense decision whether, given all the circumstances set  
22 forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons  
23 supplying hearsay information, there is a fair probability that contraband or evidence of a crime  
24 will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983). The duty of  
25 the reviewing court is "simply to ensure that the magistrate had a 'substantial basis for . . .  
26 conclud[ing]' that probable cause existed." *Id.* 238–39 (quoting *Jones v. United States*, 362  
27 U.S. 257, 271 (1960)).  
28

1 The issuing judge may draw reasonable inferences about where the evidence is likely to  
2 be found. *United States v. Fernandez*, 388 F.3d 1199, 1253 (9th Cir. 2004). In *United States v.*  
3 *Terry*, 911 F.2d 272, 275 (9th Cir. 1990), our court of appeals noted that “a magistrate may rely  
4 on the conclusions of experienced law enforcement officers regarding where evidence of a  
5 crime is likely to be found,” including knowledge that drug traffickers kept contraband in their  
6 homes or adjoining structures, as support for probable cause to support a search of a resident.  
7 Indeed our court of appeals expressly held a magistrate could draw the reasonable inference that  
8 “[i]n the case of drug dealers, evidence is likely to be found where the dealers live.” *Angulo-*  
9 *Lopez*, 791 F.2d 1394, 1399 (9th Cir. 1986).

10 “[A] magistrate need not determine that the evidence sought is *in fact* on the premises to  
11 be searched . . . .” *United States v. Peacock*, 761 F.2d 1313, 1315 (9th Cir. 1985) (emphasis in  
12 original). Rather, “only a reasonable nexus between the activities supporting probable cause  
13 and the locations to be searched” need be offered. *United States v. Ocampo*, 937 F.2d 485, 490  
14 (9th Cir. 1991).

15 Johnson argues there was no substantial basis for the magistrate judge to find probable  
16 cause to search his *home* for contraband, inasmuch as all of the controlled purchases occurred  
17 from his van. Not so. As stated, our court of appeals has held that a magistrate may draw the  
18 inference that a drug trafficker keeps contraband in his home. Here, although Johnson tends to  
19 sell from his van, rather than from his home, the fact that Johnson left his van and entered his  
20 home soon after completing a sale (the controlled sale observed here) provides a reasonable  
21 nexus between his home and his drug sales, particularly when informed by Detective Sample’s  
22 statement that drug dealers often kept some inventory in their homes.

23 Johnson cites *United States v. Carter*, 64 Fed. Appx. 109, 112 (10th Cir. 2003). There, a  
24 search warrant authorized the search of premises other than the defendant’s residence, albeit  
25 related to the defendant, based on the affiant’s knowledge and expertise that drug traffickers  
26 often kept their drugs in stash houses (as opposed to their primary homes). The Tenth Circuit  
27 affirmed the district court’s finding that the warrant was *supported* by probable cause. Johnson  
28 contends *Carter* is at odds with Detective Sample’s statement that dealers tend to keep

1 inventory in their homes, but those conclusions are not mutually exclusive. Moreover, there is  
2 no requirement that the affidavit show “that the evidence is more likely than not to be found  
3 where the search takes place.” *Peacock*, 761 F.2d at 1315. Here, where our affiant observed  
4 Johnson return to his home after the controlled buys without stopping at a different location first  
5 constitutes a substantial basis for finding probable cause to search his home. Thus, *Carter*  
6 supports the government’s case.

7 Johnson also contends the affidavit lacked any indication of the reliability of the  
8 confidential informant. Although Detective Sample’s description of the confidential informant  
9 was sparse (for example, the fact that the confidential informant had not provided false  
10 information begged the question of how much inside information he had provided in the first  
11 place), he laid out several facts that corroborated the informant’s story, based on external  
12 factors. That is, the veracity of the informant’s information bore itself out during the controlled  
13 buys and subsequent surveillance: The confidential informant did, in fact, purchase cocaine  
14 base from a person named Lamar, and the quantities corresponded to the amount of money paid.

15 Finally, Johnson contends the omission of the actual quantity of cocaine base purchased  
16 undermined a finding probable cause, inasmuch as the quantity sold was a single small rock.  
17 This, Johnson contends, calls into question the applicability of Detective Sample’s experience  
18 and training concerning the common practices of drug traffickers, because it indicates he was  
19 just a small-time dealer unlikely to maintain the bulk inventory or other paraphernalia affied to.

20 But Johnson ignores the fact that Detective Sample never limited his assertion of the  
21 likelihood that a drug dealer kept more drugs and other contraband in his home to large-scale  
22 dealers. Moreover, the repeated transactions, which occurred within a period of thirty days, no  
23 matter the quantity sold at either transaction, still provided a substantial basis for the inference  
24 that Johnson was involved in drug dealing on an ongoing basis.


25 This order finds that the San Mateo Superior Court judge had a substantial basis for  
26 concluding that the search warrant was supported by probable cause.

**CONCLUSION**

For the reasons stated above, Johnson's motion to suppress the fruits of the warrant search of his residence is **DENIED**. A separate order will address the motion to suppress the unrelated search of his person and subsequent search of his vehicle at a traffic stop.

**IT IS SO ORDERED.**

Dated: December 20, 2016.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE